IN THE HIGH COURT OF UTTRANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 82 of 2004

Date of decision: 26th October, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTRANCHAL AT NAINITAL

Appeal from Order No. 82 of 2004

1. Gulshan Kumar Nanda S/o Sri Baudh Raj.
2. Smt. Reshma Nanda W/o Sri Gulshan Kumar Nanda.
3. Km. Rachna Nanda D/o Sri Gulshan Kumar Nanda,
   All R/o B-35, Tones Colony,
   Dak Pathar, District Dehradun. …….. Appellants

Versus

1. Shamshad S/o Sri Inayat Ali,
   R/o Jeewangarh, Vikas Nagar,
   District Dehradun.
   Driver of Truck No. USK/6511.
2. Dalvinder Singh S/o Sri Singara Singh,
   R/o Doctorganj, Dak Pathar Road,
   Vikas Nagar, District Dehradun.
   Registered Owner of Truck No. USK/6511.
3. Smt. Salman W/o Sri Matloob Hasan,
   R/o Nawabgarh, Vikas Nagar,
   District Dehradun.
   Owner of Truck No. USK/6511.
4. The New India Assurance Co. Ltd.,
   Pandit Devi Dutt Road, Vikas Nagar,
   Dehradun,
   Through its Divisional Manager,
   The New India Assurance Co. Ltd.,
   7 Astle Hall, Dehradun. …… Respondents

Mr. Ramji Srivastava, Advocate for the appellants.
Mr. D.C.S. Rawat, Advocate on behalf of Mr. Rajendra Dobhal, Advocate for respondents Nos. 1, 2 & 3.
Mr. T.A. Khan, Advocate for respondent No.4.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / District Judge, Dehradun Vide Award dated 24.11.2003 passed in M.A.C.T. No. 121 of 2000.

2. The claimants, who are unfortunate parents and sister of deceased Sachin Nanda, claimed compensation of Rs. 12,30,000/- for his death in the motor accident on 28.12.1999 when his scooter bearing registration No. UP07-F-4301 was dashed by the offending vehicle Truck bearing registration No. USK-6511 resulting in his instantaneous death on the spot itself. The claimants pleaded that deceased Sachin Nanda, who was aged about 19 years, used to earn Rs. 4,500/- per month by supplying labourers to the contractors.

3. The insurer, driver and the owners (previous & present) of the offending vehicle Truck contested the claim and denied their liability to pay compensation to the claimants. The insurer took the plea that the deceased himself was negligent and as such, was responsible for the accident; the driver of the Truck was not holding a valid driving license. The previous owner of the Truck (Dalvinder Singh) took the plea that as the Truck was sold by him before the accident, the liability to pay compensation to the claimants, if any, would be of the purchaser of the Truck. The purchaser of the Truck and the driver pleaded that the scooterist (deceased) himself was responsible for the accident.

4. The claimants examined PW1 Gulshan Kumar Nanda, PW2 Ram Chandra and PW3 Ram Prakash Chawla in support of their claim, whereas the insurer of the offending vehicle Truck examined OPW1 Mohan Lal, an official of the R.T.O. Office, Dehradun.

5. The Tribunal, on the evidence led by the parties, held that Sachin Nanda died on account of the injuries sustained by him in the motor accident on 28.12.1999; the driver of the Truck and the deceased, both, were responsible for the accident in the ratio of 75% - 25% respectively; and the insurer of the Truck was liable to pay compensation to the claimants.

6. As the evidence led by the claimants about the income of the deceased was not found reliable, the Tribunal assessed his income at Rs. 2,200/- per month on the basis of the minimum wages payable at the relevant time. By deducting a sum of Rs. 700/- as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 1,500/- per month and Rs. 18,000/- per annum. By multiplying the annual dependency of Rs. 18,000/- with the multiplier of '13', the compensation was worked out to Rs. 2,34,000/-. As the liability of the insurer of the Truck was to the extent of 75% of the compensation assessed by the Tribunal, the insurer was directed to pay a sum of Rs. 1,75,500/- to the claimants with interest at the rate of 9% per annum from the date of the filing of the claim petition.

7. Mr. Ramji Srivastava, the learned counsel for the appellants submitted that the Tribunal has erred in holding that the deceased was also responsible for the accident; in not accepting the claimants' evidence about the income of the deceased; and in not awarding any sum towards Funeral Expenses and Loss of Estate.

8. Mr. T.A. Khan, the learned counsel for respondent No. 4 New India Assurance Company Ltd., on the other hand, pressed the cross-objections and submitted that the Tribunal has erred in selecting the higher multiplier of '13', and in directing the insurer of the Truck to pay compensation to the claimants, which, in fact, ought to have been paid by the purchaser of the Truck, as the contract of insurance between the Insurance Company and the seller of the Truck came to an end with the transfer of the Truck.

9. Mr. D.C.S. Rawat, the learned counsel for respondents Nos. 1 to 3 supported the Award.

10. The finding that deceased Sachin Nanda died on account of the injuries sustained by him in the motor accident on 28.12.1999 is based on the eye-witness account of PW2 Ram Chandra. On a thorough scrutiny of the evidence of PW2 Ram Chandra, we affirm the finding recorded by the Tribunal in that behalf.

11. Admittedly, the accident occurred on the junction of the Link Road with the highway. The deceased, on a scooter, joined the highway from the Link Road and the Truck was moving on the highway. In this fact situation, it was the duty of the deceased / scooterist also to take precaution before joining the highway from the Link Road. We, therefore, do not find any infirmity in the finding recorded by the Tribunal that the accident occurred due to the negligence of the driver of the Truck as well as the scooterist. In our opinion, the Tribunal has rightly assessed the negligence of the Truck Driver at 75% and that of the scooterist at 25%.

12. The claimants pleaded in their claim petition that deceased Sachin Nanda used to earn Rs. 4,500/- per month from his business. His father PW1 Gulshan Kumar Nanda, in para 1 of his deposition, has stated that his son Sachin Nanda used to supply labourers to one Aakriti Construction Company, whereas the certificate of income filed before the Tribunal was issued by one Chawla Construction Company. In this state of evidence, we are satisfied that the Tribunal has rightly discarded the claimants' evidence about the income of the deceased and has assessed his income at Rs. 2,200/- per month on the basis of the minimum wages payable at the relevant time and considering that deceased Sachin Nanda was aged about 19 years only at the time of the accident. We, therefore, affirm the assessment of the income of the deceased by the Tribunal at Rs. 2,200/-per month.

13 The assessment of the claimants' dependency by the Tribunal at Rs. 1,500/- per month and Rs. 18,000/- per annum after deducting a

sum of Rs. 700/- as personal expenses of the deceased, cannot be found fault with. Rather, the Tribunal has been quite liberal in deducting only 1/3rd of the income of the deceased as his personal expenses. As it has come in the evidence of PW1 Gulshan Kumar Nanda that he was getting salary of Rs. 15,000/- per month, the deduction towards personal expenses could have been even to the extent of 50% of the income of the deceased. Be that as it may, as there is no challenge by the respondents to the assessment of the claimants' dependency by the Tribunal, we are not inclined to disturb the finding recorded by the Tribunal in that behalf.

14. The multiplier of '13' selected by the Tribunal is certainly on the higher side in view of the dictum of the Apex Court in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another** reported in **(2003) 8 SCC 731,** wherein it has been held that, in a case, where the claimants are parents of the deceased, the multiplier should never exceed '10'. In the present case, the father of the deceased was aged about 58 years and the mother was aged about 52 years on the date of the accident. The father was an earning member getting salary of Rs. 15,000/- per month.

15. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal / Court should be just and proper compensation in the facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236,** observed in paras 8 to 10:

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during

> that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.
>
> 9. The matter of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
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> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

16. The compensation of Rs. 2,34,000/- assessed by the Tribunal, when examined in the context of the above-quoted dictum of the Apex Court, we are satisfied, is just and proper compensation.

17. The Tribunal, however, has fallen into error in not awarding any sum towards Funeral Expenses and Loss of Estate to the claimants. We, therefore, award Rs. 5,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Estate.

18. Thus, the claimants become entitled to receive a total sum of Rs. 1,85,500/- (Rupees One Lakh Eighty Five Thousand and Five Hundred only) as compensation.

19. The Insurance Company cannot be allowed to agitate the point raised by it in its cross objection, as the same, admittedly, was not pleaded by it in its written statement filed before the Tribunal.

20. For the foregoing reasons, the appeal filed by the claimants for enhancement of the compensation is allowed in part. The compensation of Rs. 1,75,500/- awarded by the Tribunal is enhanced to Rs. 1,85,500/-(Rupees One Lakh Eighty Five Thousand and Five Hundred only). Respondent No. 4 New India Assurance Company Ltd. is directed to deposit the enhanced amount of compensation before the concerning Claims Tribunal within a period of one month from today.

21. The Cross-Objections filed by respondent No. 4 New India Assurance Company Ltd. are dismissed.

22. With the above order, CLMA No. 4642 of 2004 also stands disposed of.

23. No order as to costs.

(Rajesh Tandon, J.) 26.10.2006

(Rajeev Gupta, C.J.) 26.10.2006

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